

participate and ride along during the inspections. In each case, the Complainants either declined outright or failed to show up for the inspections.<sup>736</sup>

561. For example, Marc Billingsley, a declarant for Comcast, was asked repeatedly to participate in USS inspections but consistently refused. Likewise, during a January 18, 2002 meeting with Comcast regarding the safety inspections, Comcast volunteered to have as many as 10 employees participate in the ride-alongs. However, none of those individuals, or any other Comcast representative, ever showed up for the inspections.<sup>737</sup> As for Alliance, during a September 13, 2002 meeting, representatives for Alliance stated that they would assign Alliance employee Jeff Browers to participate in the safety inspections. However, when USS drove to Plumerville to pick up Mr. Browers, Mr. Browers declined to go and did not participate thereafter.<sup>738</sup>

562. Similarly, repeated offers were made to WEHCO representatives and repeatedly notified of the safety inspections but never chose to participate in the inspection process.<sup>739</sup> Lastly, like the other Complainants, there was a standing offer to Cox to participate in the inspection process. For example, during a March 13, 2002 meeting with Cox regional construction manager Rod Rigsby and in a confirming email thereafter, Cox was informed that there was a standing invitation for Cox to participate in the inspections. Mr. Rigsby declined. This offer was repeated in an April 24, 2003 email to Mr. Rigsby in advance of the post-construction inspection

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<sup>736</sup> Declaration of Tony Wagoner at ¶¶ 42, 49, 53; Declaration of Michael Willems at ¶ 17.

<sup>737</sup> Declaration of Tony Wagoner at ¶ 42.

<sup>738</sup> Declaration of Tony Wagoner at ¶ 49.

<sup>739</sup> Declaration of Michael Willems at ¶ 17.

in Magnolia. Once again, Mr. Rigsby declined.<sup>740</sup> EAI affirmatively states that Complainants' conclusions that only EAI participated in the safety inspections and, therefore, only EAI is responsible for the costs of such safety inspections is simplistic, illogical, and inaccurate.

563. EAI denies the allegations in **Paragraph 328** of the Complaint and affirmatively refers to its response to paragraph 327 of the Complaint.

564. EAI denies the allegations in **Paragraph 329** of the Complaint and affirmatively refers to its response to paragraph 327 of the Complaint.

565. As to **Paragraph 330**, EAI admits that it assesses an administrative and general overhead charge to each invoice from USS. These charges reflect costs incurred to receive, process and issue payments and invoices as well as additional supporting activities by EAI. This overhead charge was initially 5% and was the standard administrative and general overhead charge throughout the EAI system. In April, 2004, there was a EAI system-wide increase in this overhead rate to 8% and, accordingly, the overhead rate was increased to 8% on each USS invoice.<sup>741</sup> EAI affirmatively states that the overhead charge to each Complainant does not reflect overhead for other costs incurred by EAI, including engineering and supervision, allowance for funds used during construction, and material overheads.<sup>742</sup> EAI affirmatively states that Comcast was given the option of paying the USS invoices directly or have EAI process and collect the invoices with overhead added. Comcast chose to incur the overhead

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<sup>740</sup> See email from Robert Arnold to Rod Rigsby dated April 24, 2003, attached as Exhibit "38."

<sup>741</sup> Declaration of David B. Inman at ¶ 37.

<sup>742</sup> Declaration of David B. Inman at ¶¶ 34, 37.

charge rather than pay USS directly.<sup>743</sup> These overhead costs are not recovered elsewhere in the annual rental fees paid by attachers.<sup>744</sup> EAI denies the remaining allegations in Paragraph 330 of the Complaint.

566. EAI admits that Comcast, at its choice, has incurred overhead charges relating to the safety inspections performed by USS but denies the remaining allegations in **Paragraph 331** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 330 of the Complaint.

567. EAI admits the allegations in **Paragraph 332** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 330 of the Complaint.

568. EAI admits the allegations in **Paragraph 333** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 330 of the Complaint.

569. EAI admits the allegations in **Paragraph 334** of the Complaint. EAI affirmatively refers to its response to the allegations in paragraph 330 of the Complaint.

570. EAI admits the first sentence of **Paragraph 335** of the Complaint but denies the second sentence of Paragraph 335. EAI affirmatively states that no portion of the overhead charged in connection with the safety inspections was recovered or charged in the pole attachment rental.<sup>745</sup> EAI affirmatively states that the safety inspections performed on the Comcast, Alliance and WEHCO facilities, and the resulting costs of such safety inspections, were not charges

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<sup>743</sup> Declaration of David B. Inman at ¶ 37.

<sup>744</sup> Declaration of David B. Inman at ¶ 37.

<sup>745</sup> Declaration of David B. Inman at ¶ 22.

contemplated or contained in the annual rental charges owed by those Complainants. Likewise, *the post-construction inspections performed on the Cox facilities and the related costs of such inspections were not charges contemplated in the annual rental charges owed by Cox.* The costs of the safety inspections and the post-construction inspections are separate and apart from the annual rental charges for Complainants' attachments.<sup>746</sup> Just as an overhead recovery is allowed for costs incurred in relation to the annual rental charges, an overhead recovery is equally proper to reflect costs incurred by EAI as a result of the safety inspections and post-construction inspections performed by USS. EAI affirmatively states that Comcast and Alliance were given the option to pay the USS invoices directly, and thereby avoid the EAI overhead assessment, but both chose to be billed by EAI.<sup>747</sup>

571. EAI denies the allegations in **Paragraph 336** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 335 of the Complaint.

572. EAI denies the allegations in **Paragraph 337** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 335 of the Complaint.

573. EAI denies the allegations in **Paragraph 338** of the Complaint. EAI affirmatively states that the charges to Complainants are based on actual costs and not on a per-pole basis. EAI affirmatively states that if calculated on a per-pole basis, Comcast's invoiced cost was \$25.31 per pole, inclusive of the EAI overhead charge.<sup>748</sup> EAI affirmatively states that the charges allocated to Complainants is just and reasonable and, on information and belief, is consistent with

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<sup>746</sup> Declaration of David B. Inman at ¶ 22.

<sup>747</sup> Declaration of Gary Bettis at ¶ 37.

<sup>748</sup> Declaration of Wilfred Arnett at ¶ 12.

Comcast's budgeted costs for inspections in other areas of the country. On information and belief, in 2002, Comcast budgeted \$25.00 per pole for pole inspections for its Dallas, Texas upgrade.<sup>749</sup> On further information and belief, the Cox upgrade in Jonesboro, Arkansas, which Cox retained USS to manage, is costing approximately \$33.65 per pole for the initial inspection, \$28.57 per pole for the final post-construction inspection, and make-ready construction costs are averaging \$281.00 per pole for the Cox upgrade in Jonesboro. EAI affirmatively states that in *Knology, Inc. v. Georgia Power Co.*, Comcast's current consultant (UCI) billed Knology \$1,387,176 for inspection of 19,653 Georgia Power poles, or \$70.58 per pole. Adjusting these charges to current dollars, UCI's charge to Comcast for inspections is \$91.41 per pole.<sup>750</sup>

574. As to **Paragraph 339**, EAI admits that Complainants have requested meetings with EAI and USS to question the safety inspections and to address specifications regarding the inspections. EAI admits that these meetings requested by Complainants have required that USS representatives travel to Arkansas to attend and defend the quality of the inspections. EAI admits that, on information and belief, Complainants were billed for the USS representatives' time and expense for attending those meetings. EAI affirmatively states that at such a meeting requested by Alliance, USS' Tony Wagoner informed Alliance that USS would be billing Alliance for Mr. Wagoner's time and expense. EAI affirmatively states that Alliance requested that Mr. Wagoner perform the follow-up inspections on Alliance's repairs. Mr. Wagoner agreed but informed Alliance that he would perform such inspections but that his billing rate was considerably higher than an inspector's. Nonetheless, Alliance continued to request that Mr.

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<sup>749</sup> Declaration of Wilfred Arnett at ¶ 12.

<sup>750</sup> Declaration of Wilfred Arnett at ¶ 43.

Wagoner perform those inspections though Alliance has refused to pay for such inspections.<sup>751</sup>

*EAI denies the remaining allegations in Paragraph 339 of the Complaint.*

575. In response to **Paragraph 340** of the Complaint, EAI affirmatively refers to its response to the allegations in Paragraph 339 of the Complaint.

576. EAI denies the allegations in **Paragraph 341** of the Complaint. EAI affirmatively states that an initial training session was arranged for Cox as a courtesy and as a test to determine if such a session would be beneficial to the cable providers.<sup>752</sup> This session was paid for by EAI. Subsequently, Charlotte Dial at WEHCO requested a similar training session and WEHCO agreed to pay for this training in advance. The training session was held on March 30, 2004 at WEHCO's training facility in Little Rock.<sup>753</sup> As for Comcast, it has thus far used five different contractors to perform work on its Arkansas facilities. On information and belief, none of those contractors have received any training from Comcast or USS. Likewise, on information and belief, none of those contractors have been provided any manuals or other instruction from Comcast on how to perform their work and remain safe.<sup>754</sup>

577. EAI denies the allegations in **Paragraph 342** of the Complaint. EAI affirmatively states that due to the fact that the Complainants do not remedy violations or, often, their attempts to resolve one violation creates a separate violation, repeat or follow-up inspections have been necessary. For example, in the case of Comcast, follow-up inspections reveal that a substantial portion of the repairs Comcast claims to have made turn out to either have not been made at all

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<sup>751</sup> Declaration of Tony Wagoner at ¶ 17.

<sup>752</sup> Declaration of Tony Wagoner at ¶ 14.

<sup>753</sup> Declaration of Tony Wagoner at ¶ 14.

<sup>754</sup> Declaration of Tony Wagoner at ¶ 13.

or to have created another violation.<sup>755</sup> EAI affirmatively states that the costs of follow-up inspections to check on Complainants' violations are properly allocated to the respective Complainant. EAI affirmatively states that not all of the Complainants have been as derelict as Comcast in resolving its violations. For example, in a recent follow-up inspection of Cox facilities , 180 separate violations previously noted had been corrected and no remaining violations were noted in the area inspected. Moreover, during that follow-up inspection, USS noted a pole and bond that required repair by EAI. EAI was asked to make such repairs at its expense.

578. EAI states that the entire holding in *Cable Texas, Inc. v. Entergy Services, Inc.*, speaks for itself and to the extent the allegations in **Paragraph 343** of the Complaint conflict with such holding those allegations are denied. EAI affirmatively states that the cited opinion must be read as a whole and in the context of the underlying facts of such case. EAI affirmatively states that the inspection costs allocated to Complainants are just and reasonable, and, in the case of the safety inspections, are the result of Complainants' failure to properly construct and maintain its facilities in breach of the various pole agreements.

579. EAI denies the allegations in **Paragraph 344** of the Complaint. EAI affirmatively states the allocated costs for digital cameras, GPS units, and radios used in the course of inspections is a relatively minor cost and the use of such equipment greatly assists in the inspection process and, as further described below, provides cost savings and additional benefits to Complainants. For example, in Comcast's Little Rock area, the costs for such equipment are as follows: digital cameras - \$10,899.01; radios – \$10,893.83; GPS units – \$ 8,920.33, which accounts for only

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<sup>755</sup> Declaration of Tony Wagoner at ¶ 12; Declaration of Wilfred Arnett at ¶ 35.

2.23% of the project charges for Comcast.<sup>756</sup> Comcast was assessed its share of the above charges in accordance with the cost allocation formula previously described. EAI affirmatively states that the digital cameras and GPS units save Complainants time and money in that the digital photographs document the existing conditions on the pole at that date and time and can be sent electronically to anyone with a need to know.

580. Digital photographs minimize repetitive visits to the pole by licensees, design engineers, and inspectors. The digital photographs also facilitate dispute resolution and assist with quality control of inspectors and technicians assigned to correct violations.<sup>757</sup> Likewise the GPS units save both time and expense in providing an exact location of particular poles and their corresponding violations. The GPS units also provide prompt and accurate span lengths between poles, which assists in engineering for guying and sag calculations. This is especially important where the Complainant (such as Comcast) asserts that it has no mapping information for its system.<sup>758</sup> EAI affirmatively states, Comcast required EAI to provide "maps showing where our attachments were identified" as a precondition of payment for the USS-conducted safety inspection.<sup>759</sup> Lastly, radios are provided to USS inspectors for safety purposes and the related costs are a just and reasonable expense of the inspection process.

581. EAI denies the allegations in **Paragraph 345** of the Complaint and EAI affirmatively refers to its response to the allegations in Paragraph 344 of the Complaint.

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<sup>756</sup> Declaration of Wilfred Arnett at ¶ 16.

<sup>757</sup> Declaration of Tony Wagoner at ¶ 8.

<sup>758</sup> Declaration of Tony Wagoner at ¶ 8.

<sup>759</sup> Letter from Kyle Birch to David B. Inman dated Nov. 5, 2002, attached as Exhibit "36."



582. EAI admits that USS charged for mileage at the IRS standard rate. EAI affirmatively states that mileage was calculated to the jobsite, as well as from pole to pole, and mileage for traveling to the job site from a reporting location more than 75 miles from the work location was charged to the job. Likewise, mileage calculated from pole to pole was also charged to the job. However, USS did not charge EAI or the Complainants for USS' employees' return trip home at the end of the week. On information and belief, these charges and their method of calculation are consistent with those employed within the industry. On information and belief, there were two occasions where USS employees charged over 500 miles in a single day, and in each case, the employee commuted from Atlanta to the jobsite and worked the remainder of the week. In both of those instances, there was no mileage charge for the return trip to Atlanta at the end of the week.<sup>760</sup> Cost allocation for these two instances is consistent with the USS mileage policy described above. EAI denies the remaining allegations in **Paragraph 346** of the Complaint.

583. EAI affirmatively states that the mileage claimed by Russell Buckner included travel to the worksite from his location in Atlanta to Plumerville.<sup>761</sup> EAI affirmatively refers to its response to the allegations in Paragraph 346 of the Complaint. EAI affirmatively states there was a problem regarding the electronic entry of Mr. Buckner's time for work he performed in the Plumerville area during the week of July 29, 2002. Although Mr. Buckner worked 34.5 hours that week, that time was not reflected on the July 31, 2002 invoice to Alliance. However, when the error was discovered, the time was entered and was reflected on an October 23, 2002 invoice, number 52641.<sup>762</sup> This invoice, however, was never submitted to EAI or Alliance due to its

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<sup>760</sup> Declaration of Tony Wagoner at ¶ 15.

<sup>761</sup> Declaration of Wilfred Arnett at ¶ 21.

<sup>762</sup> Declaration of Wilfred Arnett at ¶ 21.

untimeliness, and was subsequently cancelled.<sup>763</sup> EAI affirmatively states that the USS invoice reflecting the inspection of Circuit V350 was for work performed from March 3, 2002 to August 1, 2003 and included mileage for USS Project Facilitator Carl Worthington from Villa Rica, Georgia to Little Rock which was billed pursuant to the formula described in response to the allegations in paragraph 247 of the Complaint.<sup>764</sup> EAI affirmatively states that the invoice for the inspection of Circuit V350 was reasonable, accurate, and properly allocated to Comcast. EAI affirmatively states that the USS invoice reflecting the inspection of Circuit G925 included mileage for USS Project Tony Wagoner from Dallas, Texas to Little Rock and was billed pursuant to the formula described in response to the allegations in paragraph 346 of the Complaint.<sup>765</sup> EAI affirmatively states that the invoice for the inspection of Circuit G925 was reasonable, accurate, and properly allocated to Comcast. EAI denies the remaining allegations in **Paragraph 347** of the Complaint.

584. In response to the allegations in **Paragraph 348** of the Complaint, EAI affirmatively refers to its response to the allegations in Paragraphs 346 and 347 of the Complaint.

585. In response to the allegations in **Paragraph 349** of the Complaint, EAI affirmatively refers to its response to the allegations in Paragraphs 346 and 347 of the Complaint.

586. In response to the allegations in **Paragraph 350** of the Complaint, EAI affirmatively refers to its response to the allegations in Paragraphs 346 and 347 of the Complaint.

587. EAI denies the allegations in **Paragraph 351** of the Complaint.

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<sup>763</sup> Declaration of Wilfred Arnett at ¶ 21.

<sup>764</sup> Declaration of Wilfred Arnett at ¶ 22.

<sup>765</sup> Declaration of Wilfred Arnett at ¶ 22..

588. On information and belief, EAI denies the allegations in **Paragraph 352** of the Complaint. EAI affirmatively states that although it has no knowledge of the terms of Comcast's or Cox's purported contract with UCI, in other geographical markets, where UCI and USS both have services agreements with utility companies, UCI's hourly rates are similar to USS's hourly rates.<sup>766</sup> Further, in those instances, UCI also separately charges for mileage, equipment, travel and lodging.<sup>767</sup> EAI affirmatively states that at the time USS was engaged to perform the safety inspections described above, EAI did not consider UCI competent to perform the needed services in Arkansas.<sup>768</sup>

589. EAI denies the allegations in **Paragraph 353** of the Complaint. EAI states that the entire holding in *Cable Texas, Inc. v. Entergy Services, Inc.*, speaks for itself and to the extent the allegations in paragraph 353 of the Complaint conflict with such holding those allegations are denied. EAI affirmatively states that the cited opinion must be read as a whole and in the context of the underlying facts of such case. EAI affirmatively states that the inspection costs allocated to Complainants are just and reasonable, and, in the case of the safety inspections, are the result of Complainants' failure to properly construct and maintain its facilities in breach of the various pole attachment agreements.

590. EAI affirmatively states that EAI reviewed the work performed by USS in a number of ways. First, EAI has employees randomly audit USS' findings for reasonableness and completeness of the work. These random audits have revealed only occasional minor discrepancies which were then corrected. Second, any reported violation of an EAI facility is

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<sup>766</sup> Declaration of Wilfred Arnett at ¶ 44.

<sup>767</sup> Declaration of Wilfred Arnett at ¶ 44.

<sup>768</sup> Declaration of David B. Inman at ¶ 12.

inspected by an EAI employee to confirm the existence of a violation. During these inspections by EAI, its personnel also verify other reported violations on that pole. Third, representatives of EAI and USS meet regularly to discuss inspection standards and results. Fourth, EAI personnel review USS invoices to ensure that the invoices accurately reflect the work performed. For example, Brad Welch with EAI reviews each USS invoice for Alliance.<sup>769</sup> EAI affirmatively states that EAI pays an appropriate labor rate for each function performed by USS, and not a rate for a particular person. Further, based upon EAI's experience, USS's charges are comparable with other similar contractors and is, in fact, lower than what EAI would charge for the same services.<sup>770</sup>

591. EAI denies the allegations contained in **Paragraph 354** of the Complaint.

592. EAI denies the allegations contained in **Paragraph 355** of the Complaint.

593. EAI denies the allegations contained in **Paragraph 356** of the Complaint.

594. EAI denies the allegations contained in **Paragraph 357** of the Complaint. EAI affirmatively states that each of the Complainants have received itemized invoices in addition to supporting documentation which, in many cases, is redundant of the information previously provided to the Complainants with respect to invoices billing for their equitable portion of safety inspection costs.

595. EAI admits that the Complainants are suggesting two alternative methods regarding charges for safety inspection costs as alleged in **Paragraph 358** of the Complaint. EAI denies

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<sup>769</sup> Declaration of Brad Welch at ¶ 19.

<sup>770</sup> Declaration of David B. Inman at ¶ 24.

the remaining allegations contained in Paragraph 358 of the Complaint. EAI affirmatively states that the models and data used to ostensibly support the use of the models are nothing more than self-serving attempts to avoid payment of their fair share of the safety inspection costs billed by EAI.

596. EAI admits that, by way of backing into figures for *per-pole* charges which the Complainants desire to pay for safety inspection costs, it is not surprising that the two models result in similar figures as alleged in **Paragraph 359** of the Complaint. EAI denies the remaining allegations contained in Paragraph 359 of the Complaint. EAI affirmatively states that neither model suggested by the Complainants results in figures that can be justified or supported with rates charged for pole inspections of similar scope within the industry.

597. EAI denies the allegations in **Paragraph 360** of the Complaint. EAI affirmatively refers to its response to the allegations set out in paragraphs 338 and 343 of the Complaint. EAI affirmatively states that at the time EAI initially contracted with USS in December 2001, to perform field safety inspections of Comcast's plant, there were no other contractors in the area of EAI's service territory who were competent or had adequate resources and the experience necessary to perform accurate, complete inspections of the CATV cable plant.<sup>771</sup> EAI affirmatively states that it was not required by the terms of the various pole agreements to send out requests for proposals and further states that the selection of USS to perform field safety inspections and the terms of the agreements between EAI and USS were commercially reasonable.

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<sup>771</sup> Declaration of David B. Inman at ¶ 12.

598. EAI denies the allegations in **Paragraph 361** of the Complaint. EAI affirmatively refers *to its response to the allegations set out in paragraphs 338 and 343 of the Complaint*. EAI affirmatively states that a request for proposal is not required by the terms of the various pole attachment agreements and Complainants can point to no legal duty requiring a request for proposal for safety inspections (in the case of Comcast, Alliance, and WEHCO) or a post-construction inspection (in the case of Cox). EAI affirmatively states that Complainants' calculations of per-pole charges is inaccurate and purposefully misleading. For example, the numbers employed for Comcast, Alliance and WEHCO were for safety inspections while the numbers employed for Cox were for post-construction inspections. The nature and purpose of the inspections are therefore not comparable. Further, Complainants base the number of poles inspected for Comcast on Comcast's false representations as to the number of attachments it has placed on EAI's poles. As previously shown, Comcast has made a conscious business practice of placing unauthorized attachments on poles without notice to EAI in blatant breach of the Comcast Agreement. This practice, designed to allow Comcast to avoid its safety and financial responsibilities under its pole attachment agreement, has been followed by other Complainants as well. Therefore, Complainants' calculations lack any degree of credibility or basis in fact.

599. EAI denies the allegations in **Paragraph 362** of the Complaint. EAI affirmatively states that the "Competitive Rate Model" put forward by Complainants is biased and, on information and belief, is not a legitimate bid for the same services performed by USS. EAI affirmatively states that UCI is a competitor of USS with close strategic ties to the cable industry and with an obvious bias to accommodate a dominant customer in its ongoing efforts to shirk its contractual

obligations.<sup>772</sup> EAI has not been provided a copy of the purported "bid" from UCI to be analyzed. Further, the allegations in the Complaint regarding the purported bid do not establish what functions UCI would perform in order to obtain an accurate and usable safety inspection of the Comcast facilities. This makes UCI's purported bid further suspect.

600. For example, Complainants do not disclose whether the UCI bid would include methods for identifying the location of Comcast attachments and violations of the Comcast Agreement. EAI questions how any such safety inspections could be performed without including an accurate and cost effective procedure for identifying violations given the fact that Comcast has consistently refused to provide EAI maps identifying the location of its attachments. EAI affirmatively states that the UCI "bid" does not anticipate actually doing any work which casts further doubt on the credibility of Complainants' "competitive rate model."<sup>773</sup>

601. EAI submits that a more accurate measure of UCI's rates would be what it has actually charged for similar services in the past. For this, EAI affirmatively refers to its responses to the allegations in paragraphs 245 and 248 of the Complaint. Specifically, in *Knology, Inc. v. Georgia Power Co.*, UCI billed Comcast \$1,387,176 for inspection of 19,653 Georgia Power poles, or \$70.58 per pole. Adjusting these charges to current dollars, UCI's charge to Comcast for inspections is \$91.41 per pole.<sup>774</sup> Additionally, in other geographical markets, where UCI and USS both have services agreements with utility companies, UCI's hourly rates are similar to USS' hourly rates and generally include charges for mileage, per diem, and equipment rentals.<sup>775</sup>

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<sup>772</sup> Declaration of Wilfred Arnett at ¶ 41.

<sup>773</sup> Declaration of Wilfred Arnett at ¶ 43.

<sup>774</sup> *Id.*

<sup>775</sup> Declaration of Wilfred Arnett at ¶ 44.

EAI affirmatively states that beyond UCI, the rates paid by Complainants for similar services *(including to USS)* are comparable or above the rates charged by USS (even after the agreed overhead charge from EAI). Again, EAI affirmatively refers to its response to the allegations in paragraph 245 of the Complaint.

602. EAI denies the allegations in **Paragraph 363** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 362 of the Complaint.

603. EAI denies the allegations in **Paragraph 364** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraphs 287, 288 and 362 of the Complaint.

604. EAI denies the allegations in **Paragraph 365** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 362 of the Complaint. EAI affirmatively states that the terms of the Amendment of Commission's Rules and Policies Governing Pole Attachments speak for themselves and to the extent the allegations in paragraph 365 of the Complaint conflict with such terms those allegations are denied.

605. EAI denies the allegations in **Paragraph 366** of the Complaint. EAI affirmatively refers to its response to the allegations in Paragraph 362 of the Complaint.

606. EAI denies the allegations in **Paragraph 367** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraphs 140, 288, 292, 303, 321, 322, and 362 of the Complaint.

607. EAI denies the allegations in **Paragraph 368** of the Complaint. EAI affirmatively states that Complainants have shown no "improper charges" by either USS or EAI. EAI affirmatively



states that Complainants have been allocated their appropriate share of the cost of the various inspections performed by USS and the overhead costs incurred by EAI. *EAI affirmatively states* that the "Adjusted Share Model" submitted by Complainants is based entirely upon inaccurate assumptions and wholly fails to equitably allocate costs to the Complainants.

608. EAI affirmatively states that the "Adjusted Share Model" is merely another effort by Complainants to avoid responsibility for their failure to adequately construct and maintain their facilities and comply with the terms of their various pole attachment agreements. The proposed eliminations of the itemized charges by USS and EAI have no basis in reality other than Complainants do not want to pay. EAI affirmatively states that the charges that Complainants wish to disallow are considered standard itemized charges in the consulting field, including items such as mileage, per diem and equipment used.<sup>776</sup> Complainants also seek to disallow costs relating to attendance by USS for meetings that Complainants demanded to discuss inspection methods, instruction on compliance with the NESC and the various pole agreements and billing charges.<sup>777</sup> All of these charges are completely appropriate and do not, in any way, exceed standard industry practice.

609. EAI denies the allegations in **Paragraph 369** of the Complaint. EAI affirmatively states that Complainants have been provided detailed invoices for the costs incurred in performing the various inspections and that the method of allocating these costs is reasonable and equitable and is, therefore, superior to any of the cost avoidance models submitted by complainants. EAI

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<sup>776</sup> Declaration of Wilfred Arnett at ¶ 45; Declaration of Thomas Jackson at ¶ 4.

<sup>777</sup> Declaration of Wilfred Arnett at ¶ 45.

affirmatively refers to its response to the allegation in paragraph 298 of the Complaint regarding *the formula used for allocating costs of the inspections.*

610. EAI denies the allegations in **Paragraph 370** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraphs 344 and 352 of the Complaint regarding the appropriateness of daily equipment charges such as digital cameras, GPS and radios. EAI affirmatively refers to its responses to the allegations in paragraphs 346 and 352 of the Complaint regarding the appropriateness of mileage charges assessed by USS. EAI affirmatively refers to its responses to the allegations in paragraphs 346, 347, and 352 of the Complaint regarding the appropriateness of per diem, lodging and meal charges.

611. EAI affirmatively refers to its responses to the allegations in paragraphs 330 of the Complaint regarding the appropriateness of the assessment of an EAI overhead charge to the USS invoices. EAI affirmatively refers to its responses to the allegations in paragraphs 339 and 341 of the Complaint regarding the appropriateness of charges for USS time spent in meeting and training sessions demanded by Complainants or in otherwise responding to questions or demands by Complainants regarding the inspections. EAI affirmatively refers to its responses to the allegations in paragraphs 326 and 327 of the Complaint regarding the fact that the inspections performed by USS were not pole inventory audits and the inspections performed by USS were in no way in violation of the various pole agreements. EAI affirmatively refers to its responses to the allegations in paragraphs 167, 287, 288, 301 and 307 of the Complaint regarding the appropriateness of charges assessed for inspections on poles not owned by EAI or for poles on which Complainants have no attachments.

612. EAI denies the allegations in **Paragraph 371** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraph 370 of the Complaint.

613. EAI denies the allegations in **Paragraph 372** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraph 370 of the Complaint.

614. EAI denies the allegations in **Paragraph 373** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraph 370 of the Complaint.

615. EAI denies the allegations in **Paragraph 374** of the Complaint. EAI affirmatively refers to its responses to the allegations in Paragraph 370 of the Complaint.

616. EAI states that the entire holding in *Cavalier Tele., LLC v. Virginia Elec. and Power Co.*, speaks for itself and to the extent the allegations in **Paragraph 375** of the Complaint conflict with such holding those allegations are denied. EAI affirmatively states that the cited opinion must be read as a whole and in the context of the underlying facts of such case. EAI affirmatively states that Complainants are only being required to correct their own safety violations and that Complainants have failed and refused to correct their own safety violations in breach of their respective pole agreements.

617. EAI admits that Complainants have committed a large number of violations of the various pole agreements and the NESC due to inadequate strand clearances. EAI affirmatively refers to its response to the allegations in paragraph 113 of the Complaint. EAI denies the remaining allegations of **Paragraph 376** of the Complaint.

618. EAI denies the allegations in **Paragraph 377** of the Complaint. EAI affirmatively refers to its responses to the allegations in paragraph 113 of the Complaint. EAI affirmatively states that each party, whether one of the Complainants or EAI, have had the right to contest any findings of an inspection and produce evidence to disprove a finding since the beginning of the inspection.<sup>778</sup>

619. EAI denies the allegations in **Paragraph 378** of the Complaint.

620. The information contained in **Paragraph 379** is Complainants' prayer for relief, including numerous legal conclusions that are not amenable to being admitted or denied. To the extent they contain factual allegations, they are denied. Moreover, EAI denies that Complainants are entitled to the relief requested under FCC precedent or the terms of the pole attachment agreements. EAI denies any allegations of the Complaint not specifically admitted herein.

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<sup>778</sup> Declaration of Brad Welch at ¶ 21.

**VIII. CONCLUSION**

**WHEREFORE, THE PREMISES CONSIDERED,** Entergy Arkansas, Inc.  
respectfully requests the FCC to take action in this matter consistent with the views expressed  
herein and deny the Complaint.

Respectfully submitted,

/s/ Shirley S. Fujimoto/so

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Attorneys for Entergy Arkansas, Inc.

Dated April 19, 2005

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

In the Matter of )

Arkansas Cable Telecommunications )  
Association; Comcast of Arkansas, Inc.; )  
Buford Communications I, L.P. d/b/a )  
Alliance Communications Network; )  
WEHCO Video, Inc.; and TCA Cable )  
Partners d/b/a Cox Communications )

*Complainants* )

v. )

Entergy Arkansas, Inc. )

*Respondent.* )

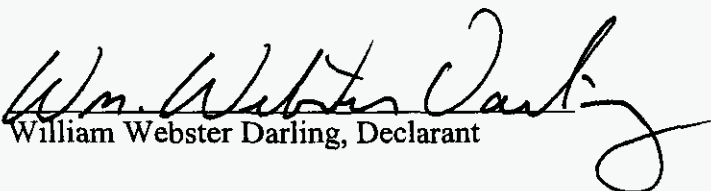
File No.: EB - \_\_\_\_\_ - MD- \_\_\_\_\_

**VERIFICATION**

I, William Webster Darling, pursuant to 47 C.F.R. § 1.1407, hereby declare as follows:

1. I am an individual over the age of 18 and am employed by Entergy Services, Inc., a division of Entergy Corporation. As counsel to Entergy Arkansas, Inc., I am familiar with the factual matters described in the Response to Complaint. I have reviewed the Response to Complaint and associated exhibits and to the best of my knowledge and belief, all the facts stated therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 15, 2005 at Little Rock, Arkansas

  
William Webster Darling, Declarant

## CERTIFICATE OF SERVICE

I, Christine Biso, do hereby certify that on this 19th day of April 2005, a single copy (unless otherwise noted) of the foregoing "Response to Complaint" and associated exhibits were delivered to the following in the manner indicated:

### **HAND DELIVERY**

Marlene H. Dortch   **(ORIGINAL PLUS 3 COPIES)**  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, DC 20554

James F. Ireland   **(6 COPIES)**  
John Davidson Thomas  
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Rita Tewari  
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### **FEDERAL EXPRESS**

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Arkansas Public Service Corporation  
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Christine Biso